

HIPAA Privacy Rule Checklists Section 164.524 – Individual Access to Protected Health Information

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HIPAA Privacy Rule Checklists

Section 164.524 – Individual Access to Protected Health Information

I. Test for When an Individual Has a Right of Access to Protected Health Information

An individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, provided the following elements are satisfied:

- a. ☐ The individual's right of access exists for as long as the protected health information is maintained in the designated record set, *except for*:
 - ☐ Psychotherapy notes;
 - ☐ Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
 - ☐ Protected health information maintained by a covered entity that is (1) subject to the Clinical Laboratory Improvements Amendments (CLIA), to the extent the provision of access to the individual would be prohibited by law; or (2) exempt from CLIA.
- b. ☐ None of the following grounds for denial are applicable:
 - ☐ A covered entity may deny an individual access without providing the individual an opportunity for review in the following circumstances:
 - ☐ The protected health information is otherwise excepted from the right of access.
 - ☐ A covered entity that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may wholly or partially deny an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
 - ☐ An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.
 - ☐ An individual's access to protected health information that is contained in records subject to the Privacy Act may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.
 - ☐ An individual's access may be denied if the protected health information was obtained from someone other than a health care

provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

_____ A covered entity may deny an individual access, provided that the individual is given a right to have such denials reviewed*, in the following circumstances:

_____ A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;

_____ The protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; *or*

_____ The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

**Note:* Review of denials shall be by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny. The covered entity must provide or deny access in accordance with the determination of the reviewing official.

II. Requests for Access and Timely Action

a. The covered entity must permit an individual to request access to inspect or to obtain a copy of the protected health information about the individual that is maintained in a designated record set. *Note:* The covered entity may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement.

b. The covered entity must act on a request for access no later than 30 days after receipt of the request, as follows:

i. _____ If the covered entity wholly or partially grants the request, it must inform the individual of the acceptance of the request and provide the access requested;

ii. _____ If the covered entity wholly or partially denies the request, it must provide the individual with a written denial;

Exception: If the request for access is for protected health information that is not maintained or accessible to the covered entity on-site, the covered entity must act on the request by no later than 60 days from the receipt of such a request

c. If the covered entity is unable to act upon the request within the required time, the covered entity may extend the time for such actions by no more than 30 days, provided that:

i. _____ The covered entity, within the applicable time limit, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will complete its action on the request; *and*

ii. _____ The covered entity may have only one such extension of time for action on a request for access.

III. **Provision of Access**

If the covered entity provides an individual with access, in whole or in part, to protected health information, the covered entity must comply with the following requirements:

- a. ____ The covered entity must provide the access requested by individuals, including inspection and/or obtaining a copy of the protected health information about them, in designated record sets;

Note: If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the covered entity need only produce the protected health information once in response to a request for access

- b. ____ The covered entity must provide the individual with access to the protected health information in the form/format requested by the individual, if it is readily producible in such form/format; or, if not, in a readable hard copy form or other form/format as agreed to by the covered entity and the individual;

- c. ____ The covered entity may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, *if*:

____ The individual agrees in advance to such a summary or explanation; *and*

____ The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

- d. ____ The covered entity must provide the access as requested by the individual in a timely manner, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the protected health information, or mailing the copy of the protected health information at the individual's request;

____ The covered entity may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access

- e. ____ If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

____ Copying, including the cost of supplies for and labor of copying, the protected health information requested by the individual;

____ Postage, when the individual has requested the copy, or the summary or explanation, be mailed; *and*

____ Preparing an explanation or summary of the protected health information, if agreed to by the individuals in advance.

IV. **Denial of Access**

If the covered entity denies access, in whole or in part, to protected health information, the covered entity must comply with the following requirements:

- a. ____ The covered entity must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which the covered entity has a ground to deny access;
- b. ____ The covered entity must provide a timely, written denial to the individual, and the denial must:
 - ____ Be in plain language;
 - ____ Contain the basis for the denial;
 - ____ Contain, if applicable, a statement of the individual's review rights, including a description of how the individual may exercise such review rights; and
 - ____ Contain a description of how the individual may complain to the covered entity or to the Secretary, including the name, or title, and telephone number of the contact person or designated office;
- c. ____ If the covered entity does not maintain the protected health information that is the subject of the individual's request for access, and the covered entity knows where the requested information is maintained, the covered entity must inform the individual where to direct the request for access;
- d. ____ If the individual has requested a review of a denial, the covered entity must designate a licensed health care professional who was not directly involved in the denial to review the decision to deny access; *and*
 - ____ The covered entity must promptly refer a request for review to such designated reviewing official;
 - ____ The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested based on the applicable standards;
 - ____ The covered entity must promptly provide written notice to the individual of the official's determination, and take other action as required to carry out the determination.
- e. ____ A covered entity must document, and retain the documentation of, the following:
 - ____ The designated record sets that are subject to access by individuals; *and*
 - ____ The titles of the persons or offices responsible for receiving and processing requests for access by individuals.